



POLICE DEPARTMENT

September 14, 2012

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Craig Malamed
Tax Registry No. 922579
61 Precinct
Disciplinary Case No. 2009-2942

The above-named member of the Department appeared before me on February 29, 2012, and May 14, 2012, charged with the following:

1. Said Police Officer Craig Malamed, assigned to the 61st Precinct, while on duty on or about September 23, 2009, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: Said Police Officer Malamed did act unprofessionally towards plain clothed members of the Department. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED
CONDUCT

The Department was represented by David Bernstein, Esq., Department Advocate's Office, and Respondent was represented by Michael Martinez, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Not Guilty.

SUMMARY OF EVIDENCE PRESENTEDIntroduction

It is not disputed that on September 23, 2009, Detectives Gregory Wilson, Faisal Khan and Stephon Garland, who were assigned to the Hate Crimes Task Force (HCTF), were on duty, in plainclothes, in an unmarked Department Jeep, investigating a bias crime that had been committed two months before at a location within the confines of the 61 Precinct. The bias crime involved a complaint that had been made by an African-American woman that a member of the Orthodox community had threatened her and had shot at her residence with a BB gun because of her race.

As the detectives were performing a house-to-house residential canvass for witnesses, a man confronted the detectives. The man told a resident not to speak to the detectives and he accused the detectives of being civilians who were impersonating police officers. Soon thereafter, the detectives heard a radio transmission regarding a call that had been made to 911. The caller alleged that men were impersonating police officers. Based on the block location provided to the 911 operator by the caller, the detectives accurately concluded that they were the subjects of this 911 call. Khan responded to the radio transmission and told the radio dispatcher that the impersonation complaint should be disregarded because the subjects of this 911 call were on-duty detectives assigned to HCTF.

The detectives then heard a radio transmission that a lieutenant had directed that a 61 Precinct patrol unit respond to the impersonation call. The detectives remained at the scene inside their unmarked vehicle and awaited the arrival of the 61 Precinct patrol unit. The 61 Precinct patrol unit which responded to the lieutenant's directive and arrived at

the scene was Sector Adam, which consisted of Respondent and his partner Police Officer Ernst Dreux, who were in uniform in a marked Radio Motor Patrol car (RMP). Sergeant Chad Manzi was on duty assigned as the 61 Precinct patrol supervisor.

The Department's Case

The Department called Detective Gregory Wilson, Detective Faisal Khan, and Detective Stephon Garland as witnesses.

Detective Gregory Wilson

Wilson, a 16-year member of the Department, testified that the man who confronted the detectives and who told a resident not to speak to the detectives and who accused the detectives of impersonating police officers, was a member of an Orthodox civilian community patrol unit which arrived on the street where the detectives were performing a house-to-house canvass for witnesses. This man demanded that the detectives show him their ID cards and when the detectives returned to their vehicle, the patrol followed them. Wilson testified that after he and his partners heard a radio transmission that a lieutenant had directed that a 61 Precinct patrol unit respond to the impersonation call, they decided to wait for the sector unit to respond to the scene "out of respect" and for everyone's "safety."

When Respondent and his partner arrived at the scene in their RMP, the detectives were seated inside their unmarked Jeep. The detectives flashed their turret lights, which were on the Jeep's headlamps and on the back windshield, to alert the officers inside the RMP that their vehicle was an unmarked Department vehicle. Wilson recalled that he

and Khan exited the vehicle and approached the RMP. Khan told Respondent that he and his partners were investigating a hate crime and people in the community were not treating them properly. Respondent held out his hand to stop Khan from speaking and asked Khan to give him his ID card. Wilson described Respondent's demeanor toward Khan as "mean" and "loud." Khan showed Respondent his shield and his ID card. Khan began talking again but Respondent interrupted, pointed at Wilson and said, "You. You show me your ID." Respondent then held out his right hand and waited for Wilson to give him his ID. Respondent appeared agitated and because Wilson felt intimidated and disrespected, he did not hand Respondent his ID card. Rather, he asked Respondent to request that his sergeant come to the scene.

Wilson stated that he and Khan waited for the sergeant outside of their Jeep while Garland waited inside the Jeep. Respondent and his partner stood outside of their car. The sergeant arrived about 10 minutes later. Wilson and Khan showed the sergeant their ID cards. Wilson testified that the sergeant examined the cards slowly by "feeling them" and "rubbing them like they are phony." The sergeant handed the IDs back to Wilson and Khan. Wilson saw Respondent point his index finger at the Jeep with his arm extended. Respondent told his sergeant that the man inside the Jeep had not showed him an ID card. Wilson described Respondent's tone as "sarcastic" and "rude." The sergeant walked over to the Jeep and checked Garland's ID. As the sergeant was walking away from the Jeep, Garland called Respondent "a fucking dick." The sergeant asked Garland, "What did you say?" Garland answered, "You heard me." Wilson stated that the sergeant then ran towards Garland "like he was going to attack him." Wilson put his hand out to calm the sergeant down. The sergeant then walked to the Jeep and took

Garland's ID again. The sergeant wrote down the information on Garland's ID card in his memo book. The sergeant told the detectives to drive to the 61 Precinct.

Wilson testified that he has served in a plainclothes capacity for about nine years. He has been asked to provide ID about ten to 15 times during his career. He has never felt that any of these previous requests to provide ID were made in an unprofessional manner.

On cross-examination, Wilson confirmed that the Patrol Guide procedure which governs how a plainclothes officer in the field must identify himself as a member of the service (MOS) to a uniformed officer, states that the uniformed MOS always controls the situation and that the uniformed MOS is responsible for taking control of the scene and checking the plainclothes officer's ID until the uniformed MOS is "satisfied" that the plainclothes officer is a MOS. Wilson acknowledged that an allegation that a person is impersonating a police officer is a serious complaint.

Wilson was asked whether it was incumbent on the detectives to remain where they were and await the arrival of the patrol unit that the lieutenant had directed to respond to the scene. Wilson did not agree that the detectives had to remain where they were because he felt that it was sufficient that the detectives had identified themselves regarding the call that was dispatched over the radio. Wilson stated that because the radio dispatcher had asked the detectives for a disposition, they "could have gave back the disposition and left."

Wilson stated that about ten members of the Hasidic community had surrounded the detectives while these radio calls were occurring. Wilson felt threatened and disrespected. Wilson showed the community members his shield, but not his ID card.

He did not recall whether his partners showed their ID cards. Wilson believed the Hasidic community members had surrounded them because they did not believe Wilson and his partners were police officers. The Hasidic community members left the scene after they heard the radio transmissions between Khan and the radio dispatcher.

Wilson agreed that when the Respondent and his partner arrived ten to 15 minutes later, he and his partners were upset because the community members had harassed them, had interrupted their investigation, and had made them the subjects of a false criminal impersonation allegation. Wilson recalled that after Khan held out his shield for Respondent to see, Respondent then asked to see his ID card which Khan then showed him. Wilson agreed that it was proper for Respondent to ask to see Khan's ID card.

When Wilson started talking to Respondent, Respondent held up his hand and gestured for Wilson to stop talking. Wilson had not shown Respondent his ID card or his shield at that point. Respondent did not touch Wilson or threaten him. Respondent did not draw his firearm and he did not pat down any of the detectives. Respondent did not use profanity when he asked to see Wilson's ID card. Wilson asked Respondent to radio for his sergeant to respond to the scene. Wilson did not show Respondent his ID card. Wilson stated that he understood the meaning of the phrase "obey now, grieve later." Wilson conceded that he should have shown Respondent his ID card and then requested that Respondent radio his sergeant.

Wilson asserted that he did not have a problem with Respondent asking to see his ID card. He had a problem with the manner in which Respondent asked for the ID card. Wilson agreed that he could have radioed to request a sergeant, but he did not. Wilson confirmed that Respondent called his sergeant after Wilson requested that he do so.

Respondent stepped back and waited for the sergeant to come. Garland stayed in the Jeep the entire time until the sergeant arrived. Wilson did not know if Respondent and his partner were aware that Garland was in the Jeep.

After the sergeant arrived, Respondent spoke to him but Wilson had no recollection of what Respondent said to the sergeant. The sergeant asked Wilson and Khan to produce their ID cards. Wilson asserted that the sergeant did not just glance at their "easily identifiable IDs." The sergeant examined the ID cards carefully. Wilson testified that the two ID cards were not frayed or peeling.

Respondent then pointed to the Jeep, which was parked about 20 feet away. He told the sergeant that the man inside the Jeep had not yet produced an ID card. Garland got out of the Jeep and the sergeant walked towards the Jeep. Wilson agreed that Garland then called Respondent "a fucking dick." Wilson testified that the sergeant appeared shocked and that he asked Garland to repeat what he had said. Wilson was surprised at the language Garland used. Wilson confirmed that up to this point, nobody at the scene had used such language.

Wilson testified that the sergeant then started rushing toward the Jeep "like he was angry" and demanded Garland's ID card. Wilson agreed that he had raised his arm toward the sergeant to block him, but he never made physical contact. He was worried the sergeant would do something inappropriate. Wilson was not surprised that the sergeant had become angry. The sergeant asked for Garland's ID card a second time. Garland responded, "Come and get it." Wilson recalled Garland saying, "You guys are dicks" two or three times.

At the 61 Precinct, when Wilson was subjected to an official Department

interview, he told his interviewers that he had requested that Respondent radio for his sergeant because he felt Respondent was being disrespectful. Wilson testified that he felt that he, Khan and Garland had been treated unfairly by both Respondent and the Hasidic all-white community because they were black.

Wilson stated that he had been asked to show his ID card about ten times during his career and that on most of these occasions the officer requesting to see his ID card was white. He claimed that when black officers respond, they do not ask him to show his ID card. Wilson testified that he believed that if he, Khan and Garland had been Caucasian MOS, Respondent would not have requested to see Wilson's ID card after he had confirmed that Khan's ID card was genuine.

Wilson confirmed that although Respondent was white, Respondent's partner was black. Respondent's partner did not say anything throughout the entire interaction. Wilson maintained that the negative manner in which the detectives had been treated by the community members did not have any effect on their later interaction with Respondent.

Wilson testified that he has had extensive training regarding plainclothes work and that he is aware that he is required to defer to commands issued by on-duty, uniformed officers in a confrontation situation. Wilson conceded that he did not follow the confrontation procedure during this incident. Wilson was never disciplined for not deferring to Respondent.

On redirect examination, Wilson recalled that the words Respondent had used when he told his sergeant that Garland had not yet been asked to produce an ID card were, "By the way, that guy didn't show me his ID either."

Detective Faisal Khan

Khan, a 15-year member of the Department, testified that after he heard a lieutenant come on the radio and direct that a patrol unit respond to the impersonation call, he and his partners decided to wait for the RMP to arrive as a courtesy to let them know they were MOS. Khan testified that after waiting ten to 15 minutes, he asked for a disposition over the radio. A few minutes later, an RMP drove up the one-way street in the wrong direction. Khan turned on the Jeep's turret lights and the RMP stopped in front of the Jeep. Khan and Wilson exited the Jeep and approached the RMP.

As Khan was telling Respondent that they were canvassing the block, Respondent cut him off, pointed at him, and asked to see his ID card. Khan concluded that Respondent was "angry and annoyed" because of the way Respondent had cut Khan off while he was speaking. Khan noted that Respondent was "alert." Khan showed him the radio which was on his hip and his shield, which was in his hand. Respondent asked Khan to show him his ID card. Khan showed Respondent his ID and Respondent then asked Wilson for his ID card. Wilson told Respondent, "Listen, my partner just showed you his ID. We are doing a canvass on this block. I am not showing you anything. Call your supervisor." Khan recalled that Respondent told Wilson, "I want to see your ID, I want to see everyone's ID." Khan described Respondent's voice as "loud." Khan described Respondent's demeanor as "strict." Khan felt degraded as if he was being treated like a perpetrator. Khan stated that he had been hoping that the officers coming to the scene would assist the detectives but instead Respondent was questioning them.

As Respondent radioed his sergeant to respond, Khan and Wilson went back inside their Jeep to wait there with Garland. A few minutes later, the sergeant arrived.

Khan and Wilson exited the Jeep and walked up to the sergeant. The sergeant asked Khan and Wilson for their IDs. Khan and Wilson gave their IDs to him. The sergeant examined the IDs and then handed them back to Khan and Wilson. Respondent then pointed at Garland and told the sergeant that he had not produced any ID. Khan felt like a “perpetrator being held on the scene” when he heard Respondent tell the sergeant that no ID had been displayed by Garland.

The sergeant asked Garland to show him his ID card. Garland complied. Garland then said, “You’re a dick.” The sergeant responded, “What did you say?” Garland said, “You heard me.” The sergeant told Garland to hand him his ID card. Garland told him to come and get it. The sergeant then “charged” at Garland and retrieved the ID card from him. The sergeant made a phone call and then told everyone that they were all going to the 61 Precinct.

On cross-examination, Khan reiterated that he felt like he was being treated like a perpetrator and that the detectives were being held at the location. Khan confirmed that Respondent never touched him, never ordered him to stay, never used any profanity, never made any threats, never said anything of a racial nature, and never took possession of Khan’s ID card. Khan stated that Respondent had asked to see Khan’s ID card “in an angry voice.” Khan agreed that he first showed Respondent his shield and his radio on his hip and that he did not show his ID card until Respondent asked to see his ID card. Khan conceded that MOS normally do not use radios to identify themselves as MOS. He agreed that the Patrol Guide directs MOS to identify themselves using their ID cards. Khan agreed that displaying a shield alone is not a proper way for a MOS to identify

himself as a MOS. He agreed that the Department takes criminal impersonation allegations very seriously.

Khan confirmed that he has received extensive plainclothes training regarding the rules that apply to confrontations with uniformed MOS and that he understood that uniformed MOS are in control of confrontation situations and plainclothes MOS must obey their commands. Khan agreed that Respondent was within his rights to order Khan and his partners to show him ID cards. Khan agreed that even if multiple plainclothes MOS are together, it is not sufficient for just one to show ID. Khan confirmed that when Respondent asked Wilson to display his ID card, Wilson had responded, "Are you kidding me? He just told you he's my partner. I'm on the job. We're working here. Call your boss. I'm not showing you ID."

Khan confirmed that Garland called Respondent either a "dick" or a "fucking dick." Khan had no recollection that Respondent said anything back to Garland. Khan recalled that when the sergeant asked Garland to repeat what he had said, Garland responded, "I didn't stutter." The sergeant then told Garland to give him his ID again. Garland responded, "Come and get it." After the sergeant then took Garland's ID, Garland then said either, "You guys are dicks" or "You guys are assholes." Khan believed that Garland was directing the phrase in the plural form to Respondent and his partner, not to the sergeant. Khan confirmed that Respondent's partner was an African-American MOS. Respondent's partner never said a word during the entire confrontation. Khan felt Garland's tone was firm, but that he was not challenging the sergeant. He understood Garland's statement, "Come and get it," to mean, "If you want it, you come and get it. I'm not going to walk over and give it to you." Khan agreed that it is

incumbent on a detective to walk his ID over if a uniformed sergeant requests to see it. Khan believed that Garland had acted appropriately given that he was annoyed by the earlier interactions with the community members and Respondent. Khan also felt annoyed that everyone at the scene was questioning whether the detectives were actually MOS. Khan testified that he did not think it was appropriate for Respondent to ask to see their ID cards and that Respondent had questioned him and his partners because of their races. Khan testified that he is of Asian descent while Wilson and Garland are of African-American descent. Khan believed that the situation would not have escalated if he and his partners were white MOS. He based this belief on "past experience" and a "gut feeling." Khan conceded he had no evidence that Respondent's actions were motivated by race and that Respondent never used any racial language. Khan confirmed that he never met Respondent before.

Detective Stephon Garland

Garland, an 18-year member of the Department, is currently assigned to Special Victims Queens Child Abuse Squad. Garland recalled that he and his partners became aware that a 61 Precinct patrol unit would be responding to the false impersonation complaint that had been called in to 911 by one of the members of the community patrol that had been harassing and disrespecting him and his partners as they were conducting their canvass. Garland testified that although he and his partners could have left, they decided to wait for the RMP as a courtesy. When the responding RMP arrived at the scene "over an hour" later, they turned on the turret lights on their Jeep to notify Respondent and his partner of their presence. Khan walked over to the RMP and started

speaking to Respondent. Garland described Respondent's tone and body language as "aggressive," not "accommodating as if he was greeting a fellow officer." Wilson got out of the car to see what was going on but Garland remained in the Jeep. He heard Respondent speaking in a "high" tone of voice and saw Respondent raise his arm to head level and point at both Khan and Wilson. Garland could only hear snippets of the conversation between Respondent and Khan and Wilson. Garland became angry at the manner in which Respondent was speaking and pointing at Khan and Wilson. Khan and Wilson then got back in the Jeep and told Garland that Respondent's sergeant was responding to the scene.

Garland stated that when the sergeant arrived, Khan and Wilson got out of the Jeep to talk to the sergeant but Garland remained in the Jeep. Garland saw both of his partners show their IDs to the sergeant. He could not hear their conversation, but he did not believe the interaction was aggressive at that point. Garland then saw two uniformed officers circling around Khan and Wilson. Garland got out of the Jeep. Respondent pointed at Garland and said in a "sarcastic" manner, "Oh yeah, and Sarge, I didn't get his ID either." The sergeant then told, Garland, "Give me your ID card also." Garland testified that as he was handing his ID card to the sergeant he looked over at Respondent and said something to the effect of, "You're a dick." Garland testified that the sergeant examined all three ID cards and then handed them back to each detective.

Garland again told Respondent, "You're a dick" or "You're an asshole." Garland then turned around and started walking back to the Jeep. Garland heard someone ask, "What did you say?" Garland believed it was Respondent who asked this. Garland turned around and told Respondent, "You heard what I said." The sergeant then said,

“Give me your ID card” in a demanding manner. Garland responded, “Okay, come and get my ID card” and continued to walk back toward the Jeep. The sergeant then started running towards him in a “threatening” and “aggressive” manner. Wilson stepped in to hold the sergeant back and said, “Sarge, calm down.” Garland recalled that the sergeant’s arms were flailing and that he was yelling and screaming.

Garland stated that he had reentered the Jeep at this point and that he began to reach for his ID card. Garland felt that the way the sergeant was yelling and screaming demonstrated that the sergeant wanted to assault him. Garland handed his ID to the sergeant. The sergeant looked at it and told everyone to go the 61 Precinct. Garland was issued a Command Discipline (CD) for his conduct during the interaction with Respondent and the sergeant. Garland signed this CD and accepted the penalty.

On cross-examination, Garland agreed that he and his partners believed they deserved “special treatment” from Respondent because they were MOS and Respondent was supposed to back them up. Garland confirmed that after members of the community patrol challenged the detectives regarding whether they were MOS, the situation “mushroomed out of control at some point.” Garland asserted that he could not recall whether a lieutenant had directed that a patrol unit respond. Garland felt that Respondent’s body language and facial expression were very aggressive because Respondent was standing in Khan’s “immediate space” and his voice was much louder than Khan’s. He felt that Respondent was speaking to Khan as if Khan had just committed a crime. Garland conceded that Respondent was responding to a criminal impersonation call and that Respondent never touched Khan. Garland did not hear the conversation between Respondent and Khan. Garland denied that he had yelled to

Respondent and his partner, “Oh, the 61 [Precinct] is here. They are going to save us all, the legendary 61 [Precinct],” or anything to that effect. Garland had no communication with Respondent or his partner before the sergeant arrived. Garland agreed that when he saw two white MOS walk behind Khan and Wilson, these MOS looked to him like they were taking a “tactical position” as if they were about to arrest them.

Garland testified that he told Respondent, “You’re a dick,” because he felt he had been insulted and he was trying to “relay an insult back.” Garland conceded that before he said this, he had no communication at all with Respondent, but when Respondent told the sergeant that he had not seen Garland’s ID card, Garland was upset by Respondent’s “sarcastic” tone. Garland agreed that he was already upset and felt degraded because of the way the community members had treated him and his partners. Garland felt degraded by Respondent and his partner as well because he felt that Respondent and his partner had not responded promptly to assist him and his partners. Garland conceded that when he called Respondent “a dick,” he had let his emotions get the best of him. Garland also conceded that after the sergeant had examined his ID, Garland called him either a “dick” or an “asshole.” He conceded that during his official Department interview, he had admitted to saying, “You’re a fucking dick” and also “You’re a fucking asshole.”

Garland confirmed that he never complained to the sergeant about how Respondent had been acting. Garland maintained Respondent had made the situation aggressive because he had pointed and spoken in an aggressive and sarcastic manner.

At his official Department interview, Garland stated that he felt that Respondent and the sergeant had treated Garland and his partners disrespectfully because of their race. Garland explained that “as a black man in this country” he has found that “it’s very

common to be treated unfairly within this country and within this Department.” Garland conceded that neither Respondent nor the sergeant had used any racial epithets.

Garland stated that after this incident he went to the Office of Equal Employment Opportunity (OEEO) to make a racial discrimination complaint. He was told to come back another time. OEEO never interviewed him. Garland has not filed a lawsuit. Garland conceded that during confrontations between uniformed MOS and plainclothes MOS, the uniformed MOS is in charge.

Respondent’s Case

Respondent called Sergeant Chad Manzi and Police Officer Ernst Dreux as witnesses and he testified on his own behalf.

Sergeant Chad Manzi

Manzi, a 10-year member of the Department, is assigned as an anti-crime sergeant in the 61 Precinct. On September 23, 2009, Manzi was assigned as patrol supervisor. Respondent and his partner, Dreux, were under Manzi’s supervision on September 23, 2009. Manzi recalled hearing a call over the radio regarding a criminal impersonation allegation. The allegation occurred in Sector Adam, where Respondent and Dreux were assigned. Respondent and Dreux were assigned the job of responding to the allegation. Manzi recalled hearing a unit state over the radio that they were the officers at the scene of the criminal impersonation allegation. He did not hear which unit it was. Manzi did not recall a lieutenant coming over the radio to request a response. The radio dispatcher assigned the job to Respondent and Dreux.

Manzi testified that either Respondent or Dreux requested that Manzi respond to

the scene. When Manzi arrived, Respondent told him that one of the detectives had refused to show ID. Two of the detectives in civilian clothes came over to Manzi. Manzi requested to see their IDs. Manzi explained that he needed to make sure the detectives were actually MOS. Manzi stated that the proper way for a plainclothes officer to identify himself is by his ID card. He stated that displaying a gun, radio, or shield is not an appropriate way for a plainclothes officer to identify himself.

Manzi explained that the uniformed member is in charge during any confrontation situation involving uniformed members and plainclothes members. The plainclothes officer is responsible for identifying himself to the police officer. The uniformed officer is also responsible for establishing the identity of the plainclothes officer. The proper way to do so is to ask the plainclothes officer for their identification card.

Manzi stated that he requested the two officers' ID cards. He took the cards into the police car because there was a light that made it easier to see. He matched the faces on the ID cards to the individuals to ensure that they were actual detectives. Manzi returned the ID cards to the two detectives. Respondent then told Manzi that there was a third person in the car who had not showed ID. Manzi testified that Garland got out of the car and "got in" Respondent's face. He screamed at him, "You're a dick. You're a dick." Manzi noted that Garland was very angry and aggressive. Respondent just stood there while Garland was yelling in his face. Respondent did not respond to Garland in any way.

Manzi testified that he was about a foot or two away from Respondent and Garland. He tried to calm Garland down. Khan and Wilson tried to hold Garland back. At this point, Manzi did not know that Garland was an officer. Wilson and Khan had not

mentioned his presence to Manzi. Garland did not announce his presence either. Only Respondent had told Manzi that there was a third detective at the scene. Manzi recalled that Respondent pointed at the Jeep to notify him of Garland's presence. Manzi also noted that a black Jeep is not a vehicle normally used by the Department.

Manzi looked at Garland's ID and verified that it was a valid Department ID. Manzi claimed that Garland started walking back to the car and yelled, "You're all a bunch of assholes." Manzi assumed that Garland was referring to him and "the other officers that were there." Manzi asked Garland to repeat what he had said. Garland stated, "You heard me, you're all a bunch of assholes." Manzi told Garland to give him his ID again. Garland got in the car and said, "Fuck you, come get it." Manzi approached the vehicle. Manzi stated that he walked, and did not run, to the car. He maintained that he did not run to the car. He never touched Garland or tried to drag Garland out of the car. As Manzi walked towards the car, Wilson and Khan got in the way in order to stop Manzi. Manzi claimed that one of the officers put his hand on Manzi's chest in order to stop him. Manzi told Garland he would be suspended if he did not give him his ID. Wilson and Khan told Garland to give Manzi his ID. Manzi took the ID and called his platoon commander to notify him of the situation. The platoon commander told Manzi to have everyone report to the stationhouse.

An investigation was conducted regarding the confrontation. Manzi was never disciplined. Manzi felt that Respondent did not act inappropriately or aggressively during the confrontation. He noted that Respondent did not respond to Garland when Garland called him a "fucking dick" or a "fucking asshole." Manzi felt Garland acted unprofessionally and was "out of line." Manzi stated that nobody had said anything

about race or made any allegations regarding race at the scene.

Manzi had been Respondent's supervisor for only few months at the time of the incident. He never had any problems with the way Respondent had conducted himself during patrols prior to the incident and Respondent had never demonstrated any racial bias.

On cross-examination, Manzi confirmed that he heard someone directly respond to the criminal impersonation allegation over the radio. The officer said they were MOS on the scene. Manzi did not recall them saying they were from HCTF. Manzi confirmed that these same officers requested over the radio for uniformed units to respond to the location. Manzi inferred by this request that the officers wanted uniformed members to help prove that they were legitimate MOS to the civilians at the scene.

Manzi affirmed that Respondent later went over the radio and made a regular priority call for Manzi to respond to the location. Manzi got to the scene and testified that the situation did not seem dangerous. At this time, Manzi believed that Respondent believed the three officers were legitimate MOS. Manzi affirmed that Respondent explained the situation to him upon his arrival at the scene. Khan and Wilson approached Manzi and asked them to see their IDs. The two officers gave Manzi their IDs with no resistance. Manzi determined that their IDs were legitimate. After that, the two officers explained to Manzi that they were from the HCTF and were at the scene to investigate a crime. Manzi affirmed that at this point, the two officers were free to leave the scene.

Manzi affirmed that Respondent notified him of a verbal disagreement between Respondent and Wilson. Respondent told Manzi that there was some "back and forth" between him and Wilson. Manzi testified to clearing up the situation between

Respondent and Wilson at the scene. After Manzi examined the two officers' IDs, they began to leave and walk back to their car. Respondent then pointed at Garland in the car and stated that Garland had not shown his ID yet. Manzi affirmed that up to this point, he had no intention of asking for Garland's ID because the other two officers had proven they were legitimate police officers. Manzi believed Garland was either a witness or a MOS. Manzi stated that he checked Garland's ID because Garland had jumped out of the car and started to yell and curse and he felt he might have to report Garland's misbehavior later. He maintained that the reason he checked Garland's ID was not because he did not believe Garland was a MOS.

On redirect examination, Manzi stated that he expects officers to brief him when he responds to situations. Manzi believed that there were only two detectives on the scene until Respondent pointed out that Garland was also present. Manzi affirmed that this was not misconduct for Respondent to point out the third person. He affirmed that it would have been appropriate for Respondent to write down the names of the officers on scene in his memo book when documenting the criminal impersonation job. Manzi also affirmed that having the names of the officers at the scene would help Respondent inform the lieutenant of the situation.

Police Officer Ernst Dreux

Dreux, an eight-year member of the Department, heard the radio call regarding a police impersonation at 22 Colin Place in Sector George. Dreux heard an officer come over the radio to state that they were from HCTF and were doing an investigation at the location. Dreux then heard a lieutenant ask for a response from the unit. No one responded to the lieutenant. The lieutenant then informed the radio dispatcher to have the

next available sector respond. The radio dispatcher then assigned Dreux and Respondent to respond to the criminal impersonation job.

Dreux and Respondent arrived about ten to 15 minutes after they received the assignment from the radio dispatcher. The officers in the Jeep Cherokee high-beamed Dreux and Respondent. The Jeep was parked in the middle of the block on Colin Place. Dreux drove down the one-way street in the wrong direction because it was a faster route. They parked about 50 feet away from the Jeep. Two individuals in suits, Khan and Wilson, came out of the Jeep. Dreux did not know nor had he ever seen the individuals before. Dreux testified that he did not communicate with any of the officers at the scene, Respondent did all of the talking.

Khan told Dreux and Respondent that the officers were from HCTF. Respondent then asked to see Khan's and Wilson's ID. Khan showed Respondent his shield. Respondent requested to see Khan's actual police ID. Khan complied. Respondent looked at the ID, but did not take physical possession of it. Respondent then asked to see Wilson's ID card. Wilson said, "Are you kidding me? I'm not showing you shit. He just showed you his ID card. I should be okay." Respondent then said, "I just want to see your ID card, that's it." Wilson replied with, "I'm not showing you shit. I'm with Detective Khan, and he just showed you his ID card. I should be okay."

Dreux testified that Garland then stepped out of the car and said, "Great, the mighty fucking 61 [Precinct] is here to save the day. Where is our professional courtesy?" Dreux was unaware of the presence of a third officer prior to Garland's statement. Neither Respondent nor Dreux responded to Garland.

Respondent then went over the radio to request the patrol supervisor to respond to

the scene. According to Dreux, Respondent never told Wilson he would call a supervisor if Wilson did not show him his ID. Wilson or Khan never requested Respondent to call a supervisor and they never called a supervisor themselves.

Manzi responded in about 10 minutes. During those 10 minutes, there was no communication between Respondent and Khan and Wilson. Respondent pulled Manzi to the side and explained the situation. Dreux could not hear the conversation between Respondent and Manzi. Wilson and Khan walked over. Manzi took their IDs, looked at it, and then gave the IDs back. Dreux claimed that Manzi never asked for their ID; Wilson and Khan voluntarily gave it to Manzi.

Dreux testified that Respondent pointed at the Jeep and told Manzi there was a third individual on the scene. Garland then exited the Jeep and walked towards Respondent. Garland started to walk fast. Garland looked at Respondent while saying, "You're a fucking asshole, you're a dick." Wilson held on to Garland and tried to calm him down. They were standing about five feet away from Respondent. Dreux felt Garland looked "as if he was ready to fight." Respondent did not do anything to signal that he wanted to fight with Garland. He did not say anything to Garland.

Dreux stated that Garland then gave his ID card to Manzi. Manzi looked at it and gave it back to Garland. Garland began to walk away and stated, "You're all a bunch of fucking assholes." Dreux felt that Garland sounded upset. Manzi then said, "Excuse me, who are you talking to?" Garland responded, "All of ya'll." Manzi told Garland to give him his ID card. Garland told Manzi to "come and get it." Wilson intervened and told Manzi he would get Garland's ID card for him. Wilson went up to Garland, who was sitting in the Jeep, and retrieved Garland's ID card. Wilson gave Garland's ID card to

Manzi. Manzi then ordered all of the officers to go to the 61 Precinct.

Dreux testified that Respondent never said anything disrespectful to any of the detectives. Respondent never used profanity. Respondent never made any comments based on race. Dreux recalled that Manzi had threatened to suspend Garland if Garland did not show him his ID as Garland was walking back to the Jeep.

On cross-examination, Dreux affirmed that he had been steady partners with Respondent for about six months prior to the incident. They continued to be partners for a total of about two years until Dreux was transferred. Dreux confirmed that they heard the police impersonation call over the radio while Respondent was writing a parking summons. Dreux stated that he heard HCTF come over the radio saying they were conducting an investigation. The lieutenant requested Dreux and Respondent to respond to the criminal impersonation call. It took Dreux and Respondent about 13 minutes to finish writing the ticket, get in the RMP and arrive at Colin Place. Dreux confirmed that while he and Respondent were driving to Colin Place, the HCTF detectives came over the radio again and asked Dreux and Respondent for their estimated time of arrival. Dreux did not recall whether the HCTF detectives asked for an "85" (request for an additional unit).

Dreux confirmed that he gave an interview to Department investigators the night the incident occurred. At the interview Dreux told investigators that the HCTF detectives asked for an 85 at the location. Dreux testified that he recalled the HCTF detectives just asking for a car to respond. Dreux affirmed that when he and Respondent got to the scene, the HCTF detectives flashed their high beams to "flag them down." He conceded that Khan and Wilson were not trying to hide themselves or conceal anything with their

bodies. Khan explained to Dreux and Respondent that he and his partners were doing a canvass of the block by going door to door. Khan explained that some of the community members and the Shomrim Patrol were giving them a hard time.

Dreux stated that Respondent then asked Khan for his identification. Khan showed him both his shield and ID card. Dreux affirmed that Respondent appeared to believe that Khan was a legitimate MOS. At this point, Dreux felt satisfied that Wilson was also a legitimate MOS. Dreux stated that if he had taken "lead of the situation" instead of Respondent, he would not have asked Wilson for identification. Dreux conceded that he was "kind of" surprised when Respondent asked for Wilson's ID. Dreux thought Wilson felt offended when Respondent asked for ID. Wilson told Respondent in a "disrespectful" tone, "I ain't giving you shit." However, Dreux read the transcript from his interview on the same day of the incident and conceded that he never said that Wilson stated, "I ain't giving you shit." Dreux conceded that the statement he made at the original interview was, "[Wilson] said 'if my partner showed you his ID card, I should not have to show you my ID card.'"

Dreux testified that Respondent did not make an emergency or urgent call for a sergeant to respond. Dreux conceded that in a second interview on November 2, 2009, he stated that he was the one who had called the sergeant's driver to ask them to come to the scene. While waiting for the sergeant, Dreux and Respondent sat in their RMP and discussed the situation. Khan and Wilson were waiting next to the Jeep. Dreux conceded that when Manzi arrived, he was the ranking MOS and was thus in charge of the scene. Respondent and Dreux walked over to Manzi and briefed him of the situation. Respondent told Manzi that he asked Khan for his ID and Khan provided it. He told

Manzi that he asked Wilson for his ID and Wilson did not provide it. Respondent also told Manzi that there was a third person in the Jeep who had not been identified. At this point, none of the HCTF detectives were trying to interrupt or talk over Respondent.

Manzi then walked to Khan and Wilson in the middle of the street. He asked for both of their ID cards. He looked at the ID cards and then handed them back. Khan and Wilson began to walk back to their vehicle. Dreux confirmed that things were calm at this time.

Respondent then pointed at the Jeep and told Manzi there was a third person on scene.

Dreux agreed that this is when Garland exited the car and started to yell.

Respondent

Respondent, a 14-year member of the Department, was assigned to the Sector Adam Boy Eddie in the 61 Precinct on September 23, 2009. He was partnered with Dreux in a marked RMP. Respondent testified that he first heard the radio calls regarding a criminal impersonation job when he was writing a parking summons on 3907 Shore Parkway. He heard the radio dispatcher read out jobs for 20 Colin Place. According to Respondent, the radio dispatcher stated that she was getting numerous calls for people impersonating officers. Respondent recalled a unit coming over the radio and saying they were HCTF on the scene. After a few transmissions, Lieutenant Crawford requested through the radio dispatcher that a unit be sent to the scene to see what was going on. Crawford was the Special Operations Lieutenant in Respondent's command.

Respondent testified that the radio dispatcher had them respond to 20 Colin Place. Respondent and Dreux got to the scene. As they were driving up McDonald Avenue, they saw high beams flash at them from a black Jeep on Colin Place. Respondent and

Dreux drove down the one-way street in the wrong direction. Respondent claimed that he never saw any turret lights on the Jeep. Once Respondent parked, Khan and Wilson approached him. Respondent testified that Khan and Wilson were dressed in suits. He had never seen the officers prior to this encounter. Respondent did not see any police paraphernalia on or with the officers.

Khan told Respondent he was in the HCTF and they were working on a job. Respondent's gut instinct at this point was that Khan and Wilson were legitimate police officers. Khan told Respondent they were experiencing "friction" from the community. Respondent asked Khan to see his ID. Khan showed Respondent his detective shield. Respondent asked Khan to see an actual ID card. Respondent testified that according to Department standards, officers use an ID card to identify themselves. The detective shield is not a sufficient form of identification. Respondent stated that he had never worked in plainclothes or undercover work. He learned in Police Academy training that a uniformed member is in charge of a situation when there are both uniformed and plainclothes officers present. He stated that a confronted officer must produce identification to the satisfaction of the uniformed officer. Khan took out his ID card. Respondent saw Khan's name on the ID card. He still did not know Wilson's name.

Respondent testified that at this point he was "pretty confident" that Khan and Wilson were members of the service. He asked Wilson to show his ID because of the fact that he was dealing with a criminal impersonation job. Respondent explained that the Internal Affairs Bureau (IAB) is notified when there is an impersonation job. He felt he would later be asked questions regarding what happened, who he saw and who he talked to. Respondent was going to write down everyone's name and write in his memo

book in order to be prepared for any questioning. Respondent wanted to be able to tell whoever may question him that he saw the IDs and knew the names of the individuals he had spoken to on scene.

Respondent asked Wilson for his ID. He told Wilson he was sent by the radio dispatcher and by his lieutenant to see the officers' IDs. Wilson said "No, I'm not showing it to you. I'm with him. It's a courtesy. I'm with him, that's good enough." Respondent asked Wilson for his ID a second time. Wilson said no again. Respondent told Wilson he would call a sergeant over if Wilson did not produce his ID. Wilson responded with, "Do what you have to do." Respondent maintained that he never yelled, cursed, or made racial comments at Wilson. He stated that Wilson never asked him to call his sergeant. Wilson never called the sergeant himself.

After Wilson refused to show Respondent his ID, Respondent and Dreux walked away. Garland got out of the car. Respondent did not know there was a third person on the scene until this point. Garland was dressed in a suit and tie. He was standing about 50 feet away from Respondent. Garland stated, "The almighty 61 [Precinct] is here to fucking save the day. Nothing but a problem, with these guys. Where's the courtesy?" Respondent stated that Garland's statement offended him. He did not say anything back to Garland. He did not say anything to Khan and Wilson. Respondent maintained that he did not want to start a confrontation because it would have been unprofessional.

Respondent then radioed for his sergeant. While waiting for the sergeant to arrive, Respondent did not make any more efforts to retrieve Wilson's ID from him. He did not speak to any of the HCTF detectives. Manzi came to the scene about 10 minutes later. Respondent told Manzi he was there for a police impersonation job. He told Manzi

that he saw Khan's ID, but that Wilson was refusing to show his ID. Manzi went over to Khan and Wilson to get their IDs. According to Respondent, Manzi then did a "thorough examination" of the IDs by taking them to the RMP and looking at them under better lighting. Manzi then returned the IDs to Khan and Wilson. Respondent then pointed to the Jeep and told Manzi there was a third person inside. He told Manzi that he did not see his ID and did not know who he was. Respondent stated that he believed Garland was an officer without seeing his ID.

Garland then got out of the car and began to curse and yell. He said, "You're a dick, you're a fucking dick." Respondent stated that Garland charged towards him and looked like he was ready to fight. Wilson was holding Garland back. Garland was standing about five to ten feet away from Respondent at this point. Respondent remained standing where he was. He did not move toward Garland and did not motion to fight him. Garland kept saying, "You're a dick, you're a fucking dick" as Wilson was holding him back.

Manzi retrieved Wilson's ID card from him. Manzi then gave it back to him and said, "Okay this is over with. Everybody go about your business, whatever you are doing." Respondent claimed that Garland then started calling everyone "assholes" and "dicks." Manzi asked Garland, "Are you talking to me?" Garland replied, "I didn't stutter, did I?" Manzi asked to see his card again. Garland said, "For what? I showed it to you already. I don't have to show it to you again." Manzi then told Garland he would be suspended if he did not show his ID card. Garland told Manzi, "Fuck you, come and get it." Garland sat inside of the car. At this time, Wilson was trying to convince Garland to give Manzi his ID. Garland passed his ID out of the Jeep window to Wilson.

Wilson handed the ID to Manzi. Manzi looked at Garland's ID a second time. Manzi called the platoon commander, Lieutenant Thompson. Thompson instructed Manzi to have all the officers at the scene go back to the 61 Precinct.

Respondent maintained that during his entire time at the scene, he never used profanity and never threatened anyone. Respondent maintained that he never treated Garland "differently because of his race." He testified that none of his actions on the date of the incident were motivated by racial bias. Respondent testified that his wife of over six years is half African-American. His partner of a couple of years, Dreux, is also African-American.

Respondent testified that he believed the HCTF detectives were legitimate members of the service during the encounter. Respondent maintained that he asked for their IDs because all police impersonation jobs require a notification to IAB. He noted that IAB monitors the radio and he wanted to be prepared to explain to IAB the measures he took to respond to the criminal impersonation job. He mentioned incidents in the past few years where on-duty cops were involved with criminals who were not cops. Respondent asserted that he would not have done his job properly if he did not ask the HCTF officers for their IDs. Respondent stated that he would not have been able to give his lieutenant any of the HCTF officers' names if Respondent did not see each of their IDs.

Respondent asserted that he did not do anything to escalate the situation between him and the HCTF officers. Respondent stated that he pointed at the Jeep when he told Manzi that there was a third person on scene. He maintained that there were a hundred cars parked on the street and he pointed so that Manzi knew exactly which vehicle

Respondent was referring to. He stated that he was not pointing to “antagonize” Garland. Respondent asserted that his tone was simple and professional.

Respondent testified that he was subjected to an official Department interview later that night. The Department at some point before trial made an offer to resolve the matter with a Schedule “B” Command Discipline. Respondent refused the offer because he felt that none of his actions warranted any discipline. He testified that no one explained to him what exactly he did wrong. He felt he acted properly and professionally that night.

On cross-examination, Respondent confirmed that he was writing a parking ticket when the call for police impersonation first came over the radio. Respondent stated that he was not listening to the radio calls intently. He stated that he heard someone from HCTF come over the radio and say something like, “Be advised, it’s us, Hate Crimes.”

Respondent confirmed that it took about 13 to 18 minutes from the initial radio call to the time Respondent arrived at Colin Place. Respondent stated that a Jeep flashed its high beams at him once he got to Colin Place. He asserted that the detectives in the Jeep never turned on any turret or police lights when signaling to Respondent. Respondent recalled giving an interview a couple of hours after the incident occurred. Respondent testified that the charges and specifications had been pending against him for about two and a half to three years. During this period, he was aware the he would be called to answer to the Charges and Specifications in the trial room. Respondent claimed that he never listened to the interview he had previously given. He did not recall stating in the interview that the HCTF officers flashed their turret lights.

Respondent understood the high beams to be the HCTF officers’ way of “flagging

him down.” He confirmed that Khan and Wilson exited the Jeep wearing business suits. He conceded that the two officers met him in the middle of the street and were not trying to hide. He confirmed that Khan identified him and his partners as HCTF officers, which was the same as what he had initially said over the radio. Khan told him they were investigating a crime. Respondent conceded that the type of crime investigation Khan explained to him was a typical activity of Department detectives. Respondent agreed that he had no reason to doubt Khan’s story. Respondent stated that Khan introduced Wilson as his partner. He stated that Khan never mentioned that Garland was in the Jeep. Respondent was not aware of Garland’s presence until Garland got out and started screaming.

Respondent confirmed that he asked for Khan’s ID and Khan initially showed him his shield. Respondent asked him a second time and Khan then displayed his identification card. At this point, Respondent was satisfied that Khan was a MOS assigned to HCTF. Respondent stated that he then assumed Wilson was also an MOS, but was not satisfied because he had not seen Wilson’s ID. Respondent asked Wilson for his ID. Wilson did not produce his ID. Respondent affirmed that Wilson was not being discourteous and did not use profanity. Respondent mentioned previous incidents with on-duty cops and people engaged in criminal activities. He claimed he wanted to check Wilson’s ID just to be “completely satisfied” that both Khan and Wilson were legitimate MOS.

Respondent stated that he never believed any of the three HCTF officers to be impersonators. He stated it was his job to identify the officers and get answers. After Wilson did not produce his ID, Respondent affirmed that he requested a sergeant to

respond. He did not state that it was an emergency situation over the radio. Respondent and Dreux waited next to their RMP. Khan and Wilson waited next to their own vehicle across the street about 40 feet away. Respondent stated that Garland was in the back seat of the Jeep. Respondent agreed that he could not see Garland's hands and "it could have been a bad thing" if Garland was "a police impersonator intent on doing harm."

Respondent confirmed that he never frisked or searched Wilson or Garland.

Respondent testified that Garland exited the car and said, "The almighty fucking 61 [Precinct] is here." Respondent felt that Garland was acting unprofessionally and improperly. Garland's conduct did not frustrate or upset Respondent. Respondent stated he was offended at the way Garland behaved because there were people on the street. Respondent stated that he brushed off Garland's statement and let Garland get back in the Jeep. Respondent walked away and waited for Manzi, who arrived at the scene ten minutes later. Respondent confirmed that Manzi was in charge once he got to the scene. Respondent agreed that he told Manzi that Khan had showed him his ID, but Wilson had not. He affirmed that he told Manzi about Garland coming out of the Jeep and yelling at him. While Respondent was briefing Manzi, none of the HCTF officers came up to them or cut Respondent off from talking. Manzi checked both Khan and Wilson's IDs. Respondent pointed at the Jeep and told the sergeant there was a third person inside. Garland jumped out of the Jeep and started yelling.

FINDINGS AND ANALYSIS

It is charged that Respondent wrongfully engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that he "did act

unprofessionally towards” the detectives. The Department’s position that Respondent acted unprofessionally towards the detectives is not based on what Respondent said to the detectives but, rather, the manner in which he addressed them. In the Department’s Bill of Particulars, the Assistant Department Advocate asserted that Respondent had acted unprofessionally towards the detectives “due to his unprofessional tone, demeanor and finger-pointing.”

Respondent candidly testified that based on the radio transmissions he and his partner had heard, when they arrived at the location he believed that Wilson, Khan and Garland were MOS. Nonetheless, since Respondent had responded to an impersonating a police officer call and since Wilson, Khan and Garland were all wearing plainclothes and seated in an unmarked vehicle, Respondent was required to comply with the requirements of Patrol Guide Procedure No. 212-33, “Confrontation Situations,” which delineates what Respondent, as the “challenging officer,” had to do to properly confirm that Wilson, Khan and Garland, the “confronted officers,” were all MOS.

I find it significant that Patrol Guide Procedure No. 212-33 specifically states that “(I)t must be absolutely clear in the minds of all members of the service that in any confrontation, the burden of proving identity rests on the CONFRONTED OFFICER whether on or off duty,” and that the challenging officer “will remain on heightened alert until the member is completely satisfied as to the person’s identity through verification of credentials.”

As to the detectives’ claims that Respondent acted unprofessionally towards them, the record clearly establishes that at the point in time when Respondent and his partner arrived at the scene, the detectives (especially Wilson and Garland) were in a foul mood

because they were upset and annoyed at the disrespectful manner in which they had been treated by some residents of the 61 Precinct while they were conducting their house-to-house canvass and they were extremely angry that someone had called 911 and falsely alleged that they were impersonating police officers.

Thus, I find that when Respondent followed proper procedure under Patrol Guide 212-33 and requested to see Wilson's ID card after he had examined Khan's ID card, his proper request constituted the proverbial straw that broke the camel's back and as a result of the disrespectful manner in which Wilson had been treated by residents of the 61 Precinct, something in Wilson snapped. Wilson, as the "confronted officer," was required to establish that he was a MOS. Wilson's improper refusal to show his ID card to Respondent set off a chain of events that resulted in the patrol supervisor having to respond to the scene and, ultimately, this trial.

As to Garland, I find that he was so furious about the events that had preceded Respondent's arrival that he stayed inside the Jeep fuming rather than walk over to the arriving RMP with Khan to greet the uniformed officers who, Garland knew, were there only because they were responding to a radio call. In his testimony at this trial, Garland betrayed that he was angry at Respondent even before he arrived at the scene because, according to Garland, the detectives had to cool their heels for "over an hour" awaiting their arrival. The pent up anger inside Garland found its release when, after Sergeant Manzi had arrived at the scene, Garland stormed out of the Jeep after he saw Respondent pointing at him indicating to Manzi that the man inside the Jeep had not presented an ID card. The level of Garland's anger is reflected by the fact that he admitted that even though he and Respondent had not exchanged a single word up to that point, he called

Respondent “a fucking dick” in front of Manzi, a supervisor, and when Manzi then demanded that Garland hand him his ID card, Garland told him, “Come and get it.”

The three detectives variously testified at this trial that Respondent had acted unprofessionally towards them since they perceived that he was “angry and annoyed” and “aggressive” because his demeanor was “alert” and “strict,” and because they interpreted the tone of his voice as “high,” “mean,” “loud,” and “sarcastic,” and because it appeared to them that when he pointed his index finger he was being intentionally “rude.” I find that the accuracy of their perceptions of Respondent’s tone, demeanor and finger-pointing are not reliable because at the point in time when Respondent encountered them, they were angry, their nerves were raw, and they were extremely sensitive to any perceived slight as a result of the disrespectful manner in which they had been treated by civilians in the area who were members of a community patrol.

Finally, Garland betrayed that as soon as he saw Respondent’s face he was pre-disposed to assume that Respondent would treat him in a disrespectful manner since Respondent is Caucasian and Garland is an African-American. Garland testified that “as a black man” he has experienced that “it’s very common to be treated unfairly within this country and within this Department.”

Since I find that the Department did not meet its burden of proving that Respondent acted unprofessionally toward the detectives, Respondent is found Not Guilty.

APPROVED
DEC 27 2012
RAYMOND W. KELLY
POLICE COMMISSIONER

Respectfully submitted,
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Robert W. Vinal
Assistant Deputy Commissioner – Trials